No. 75-1674

In the Supreme Court of the United States

OCTOBER TERM, 1976

KINGS COUNTY, ET AL., PETITIONERS

v.

SANTA ROSA BAND OF INDIANS, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

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This memorandum is submitted pursuant to the Court's order of October 4, 1976, inviting the Solicitor General to express the views of the United States. The United States opposes the petition for a writ of certiorari.

STATEMENT

The Santa Rosa Band is an Indian tribe organized under Section 16 of the Indian Reorganization Act of June 18, 1934, 48 Stat. 984, 987, 25 U.S.C. 476. The Band occupies the Santa Rosa Rancheria (Reservation) in Kings County, California. Legal title to the Rancheria is held in trust by the United States for the benefit of the Santa Rosa Band. See 25 U.S.C. 465 (Pet. App. 33).

The individual respondents, Barrios and Baga, are members of the Band living within the Rancheria. They and

their families had been "living in inadequate, sub-standard, unhealthy and crowded housing facilities" (Resp. App. 49)[1]. In early 1973, Barrios and Baga applied to the Bureau of Indian Affairs (BIA) for financial assistance in purchasing mobile homes to be placed on the Rancheria (*ibid.*). The BIA is authorized to provide such assistance under its Housing Improvement Program (HIP),[2] which is designed to assist low-income Indians living in substandard housing. Finding Barrios and Baga eligible for assistance, the BIA granted each $3,500 to be used for purchasing the mobile homes, which cost more than $6,000 apiece (*ibid.*).

After Barrios and Baga purchased their homes, the Indian Health Service (IHS), an agency within the Department of Health, Education and Welfare,[3] planned to provide them with water and sanitation services (*id.* at 50). IHS is also improving the community water system for the entire Rancheria.[4]

The Rancheria is considered a General Agricultural District under Section 402 of the County Zoning Ordinance (Kings County Ordinance No. 269) (Resp. App. 35). Under Section 402C(7), a mobile home in such an area may, upon

[1]"Resp. App." refers to the appendices contained in Respondents' Brief in Opposition. The Modified Findings of Fact and Conclusions of Law of the district court are set forth at Resp. App. 47-59.

[2]HIP assistance is authorized by the Act of November 2, 1921, 42 Stat. 208, 25 U.S.C. 13 (Resp. App. 25-26), and is funded through appropriations under the Act of August 10, 1972, 86 Stat. 508 (Resp. App. 31-32).

[3]IHS services are provided pursuant to Section 7 of the Act of August 5, 1954, as added, 73 Stat. 267, 42 U.S.C. 2004a (Resp. App. 28-30).

[4]The funds for these services were appropriated in P.L. 92-18 (85 Stat. 40). Upon evaluating the environmental effect of installing water and sanitation systems on the Rancheria, IHS determined that there would be no significant adverse impact (Resp. App. 50).

the approval of county officials, be used as "a guest house residence or farm employee housing * * * for a maximum period of two (2) years" (*ibid.*). County officials informed respondents that in order to obtain administrative approval, each had to submit an application to the County Zoning Administrator, accompanied by a comprehensive site plan and a fee of thirty dollars to defray the Planning Department's expense in preparing a required environmental impact report (*id.* at 53). Before approval is granted, the Administrator must decide that the proposed use is in conformity with the other provisions and objectives of the Zoning Ordinance. Section 1803, Kings County Ordinance No. 269 (Resp. App. 43-44).

Barrios and Baga were also advised that the County Building Code required inspections and permits for utility hookups and for the plumbing work the IHS planned to perform; these permits cannot be obtained without the payment of fees of $19.50 for each mobile home (Pet. 4-5; Pet. App. 3). Barrios and Baga have not paid the fees.

The Band, as well as Barrios and Baga individually, brought suit in the United States District Court for the Eastern District of California for declaratory and injunctive relief to restrain enforcement of the relevant county ordinances insofar as they interfered with provision of services to the Band and its members by the BIA and the IHS. The district court granted plaintiffs' motion for summary judgment on October 11, 1973, holding that under Public Law 280[5] the County had no jurisdiction to enforce the county ordinance on Indian trust land (Resp. App. 58).

[5]Sections 2 and 4 of the Act of August 15, 1953, 67 Stat. 588, 589, 18 U.S.C. 1162, 28 U.S.C. 1360; Act of April 11, 1968, Title IV, 82 Stat. 78 *et seq.*, 25 U.S.C. 1321 *et seq.* Section 4 of Public Law 280, codified as 28 U.S.C. 1360, is set forth at Pet. App. 29-30.

The court of appeals affirmed. The court ruled that Public Law 280 does not confer jurisdiction upon a county to enforce its land use ordinances on Indian trust lands and that the Kings County zoning ordinances and building codes in question were therefore not applicable to the Band or its members. In reaching its decision, the court relied upon four separate and independent grounds:

1. The county ordinances in question are not, as Section 4 of Public Law 280, 28 U.S.C. 1360(a), requires, "civil laws of [the] State * * * that are of general application * * * within the State * * *."

2. The States are precluded by Section 4 of Public Law 280, 28 U.S.C. 1360(b), from regulating the use of Indian trust property "in a manner inconsistent with any Federal * * * statute or with any regulation made pursuant thereto * * *," and the ordinances in question are inconsistent with the regulations set forth at 25 C.F.R. 1.4.

3. Application of the ordinances to such property is contrary to the explicit provision in 28 U.S.C. 1360(b) stating that the statute does not authorize the "encumbrance" of Indian trust property.

4. Application of the ordinances to respondents would be inconsistent with those federal statutes authorizing the BIA and IHS to provide housing and sanitation aid to the Band.

The court of appeals vacated a portion of the district court's order, which it found to be overbroad, and remanded the case for the fashioning of a new order consistent with its opinion (Pet. App. 26-27).

ARGUMENT

This Court has recognized in numerous decisions that Indians traditionally have been free from state jurisdiction and control. In general, state laws do not apply to tribal

Indians on Indian reservations unless Congress has expressly provided otherwise. *Bryan* v. *Itasca County*, No. 75-5027, decided June 14, 1976, slip op. 2-3, n. 2, and cases there cited. The Court therefore will not infer from ambiguous statutory language that Congress intended to surrender federal control over Indian reservations, thereby allowing the State to treat the Indians living there as part of the general community. *Bryan* v. *Itasca County, supra,* slip op. 18-19, and cases there cited; see also *Kennerly* v. *District Court of Montana,* 400 U.S. 423, 424, n. 1, 427.

1. Petitioners contend that Public Law 280, 67 Stat. 589, 28 U.S.C. 1360(a),[6] conferred jurisdiction on the county government to apply its local zoning regulations to property belonging to Indians, located within the boundary of the Indian reservation and held in trust by the United States. We believe that this contention is foreclosed by *Bryan* v. *Itasca County, supra,* decided after the court of appeals rendered its decision in this case.[7]

In *Bryan*, as in this case, a county government attempted to apply its laws with respect to a tribal Indian's mobile home located in a reservation on land held in trust by the

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[6]The Act originally applied only within the States of California, Minnesota, Nebraska, Oregon and Wisconsin. It permitted other States, by subsequent affirmative action, also to assume jurisdiction under its provisions. The consent of the Indians affected was not required. Public Law 280, 67 Stat. 590, Sections 6 and 7. In 1968, the Act was amended to provide that thereafter a State could assume the jurisdiction authorized by the Act only "with the consent of the * * * tribe, occupying the particular Indian country" affected, in the form of a majority vote of the enrolled adult Indians affected. 82 Stat. 78, 79, 80, 25 U.S.C. 1321(a), 1322(a), 1326.

[7]The petition for certiorari was filed on May 18, 1976, before the *Bryan* decision was rendered. Petitioners subsequently filed a supplemental brief on August 2, 1976, in which they discussed the *Bryan* decision.

United States. The county, like the county here (Pet. 15-22), relied for its authority on Section 4 of Public Law 280, 28 U.S.C. 1360(a), which provides in part that "those civil laws of [the State of California] that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State * * * ." The Court in *Bryan*, after considering this language and the history surrounding it, concluded that "the primary intent of § 4 was to grant jurisdiction over private civil litigation involving reservation Indians in state court." *Bryan* v. *Itasca County, supra,* slip op. 11.[8] The Court further noted that had Congress desired to go further and "confer upon the States general civil regulatory powers, including taxation, over reservation Indians, it would have expressly said so." *Id.* at 17.

The only difference between *Bryan* and the present case is that in *Bryan* the county sought to collect personal property taxes from the Indians, while here the county seeks the Indians' compliance with local zoning restrictions. Public Law 280, however, admits of no distinction between county rezoning laws and county laws imposing personal property taxes; the statute confers no authority on local governments to require reservation Indians to comply with either. Indeed, the Court in *Bryan* cited the opinion of the court of appeals in this case in support of its decision that Public Law 280 did not confer "upon state and local governments general civil regulatory control over reservation Indians." *Bryan* v. *Itasca County, supra,* slip op. 14, 15, n. 14.

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[8]The Court noted that the legislative history of Public Law 280 contained nothing "remotely resembling an intention to confer general state civil regulatory control over Indian reservations." *Id.* at 10-11.

2. Petitioners offer no reasons why Congress, although not intending Public Law 280 to grant States civil regulatory authority over reservation Indians, did intend to allow local governments to regulate the use of reservation land. Rather, petitioners argue that the Court in *Bryan* misconstrued 28 U.S.C. 1360(a) (Pet. Supp. Brief, p. 2.)

The report of June 29, 1953, from the Secretary of the Interior to the Chairman of the House Committee on Interior and Insular Affairs, upon which petitioners rely for their argument, does not support the weight they attach to it. In that report, the Secretary stated his view, in language quoted by petitioners (Pet. Supp. Brief, p. 6), that—

> the effect of [Public Law 280] would be, not merely to permit the State courts to adjudicate civil controversies arising on Indian reservations in California, but also to extend to those reservations the substantive civil laws of the State insofar as those laws are of general application to private persons or private property.

The Secretary's report, of course, scarcely demonstrates what Congress intended; in any event, the Secretary's statement is consistent with the Court's view in *Bryan* that 28 U.S.C. 1360(a) concerns the law to be applied in civil litigation in state courts. The report did not indicate that the revised bill would, as petitioners put it, "allow the States to apply *all* their civil laws, including regulatory laws, on Indian reservations" (Pet. Supp. Brief, p. 6, petitioners' emphasis). Rather, the Secretary indicated, in language quite similar to that in 28 U.S.C. 1360(a), that the bill, would, as the Court found in *Bryan*, "authorize * * * application by the state courts of their rules of decision to decide such disputes" (slip op. 10).

Moreover, while petitioners make much of the Secretary's proposed revisions of the draft bill (Pet. Supp. Brief, pp. 3-9), they ignore the Secretary's statement (App. to Pet. Supp. Brief, p. 3) that, with one exception not relevant here, none of his proposals represented a "major substantive difference" with the Committee version of the bill. The effect of the Committee version, as the Secretary had previously noted (*id.* at 1), was to "permit the courts of the State of California to adjudicate civil controversies of any nature affecting Indians within the State, except where trust or restricted property is involved." Thus, the proposed revisions hardly support the contention that state regulatory laws were to apply with full force to Indian reservations.[9]

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[9]Even if Public Law 280 confers civil regulatory authority on the State, it does not do so for political subdivisions of the State. Public Law 280 makes applicable only "those civil laws of such State or Territory that are of *general application,*" 28 U.S.C. 1360(a) (emphasis added), and 28 U.S.C. 1360(c) preserves the authority of tribal ordinances and customs not inconsistent with *state* civil laws without mentioning county or municipal laws. Since municipal or county laws are not state laws of general application, the Act does not authorize application of county zoning laws within reservations in respect to Indian property. Cf. *Moody* v. *Flowers,* 387 U.S. 97, 101.

Moreover, as the court below observed (Pet. App. 14), tribal governments under the statute are "more or less the equivalent of a county or local government in other areas within the state * * *." They have the authority to impose their own restrictions on land use within their reservations. Cf. *Morris* v. *Hitchcock,* 194 U.S. 384.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

DECEMBER 1976.

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